hitherto hath Neglected and refused and still doth refuse and unjustly Detain Contrary to the Duty of his Office aforesd and the form and effect of the Condition aforesd And this the said Attorney General is ready to Verify for the said Lord Propriatary wherefore for the same Lord Propry he prayeth Judgment for the Debt aforesd and the Damages Occasioned by detaining the said Debt unto the said Lord Propry. to be adjudged and so forth

And the said John Protesting that there is not any such Act of Assembly as the said Attorney General hath in his Replication aforesd set forth Protesting also that he the said William could Collect the five Pounds of Tobacco per Poll in the said Replication mentioned upon no more than five hundred and forty nine Tiaxables and Inhabitants of the said Westminster Parish which in the whole Amount only to the Sum of Two Thousand eight hundred and forty five Pounds of Tobacco and also Protesting that the Replication aforesd of the said Lord Propry is Insufficient in Law nor is he the said William by the Law of the Land Bound thereto in any manner to Answer for Plea Nevertheless by way of Rejoinder he the said John saith that as to the Quantity of Ninety Pounds of Tobacco part of the aforesd Quantity of fourteen hundred & thirty one Pounds of Tobacco in the Replication aforesd of him the said Lord Propry mentioned he doth not owe to the aforesd Vestry of Westminster Parish aforesd the aforesd Quantity of ninety Pounds of Tobacco aforesd nor any part thereof in such manner and form as the said Lord Propry. above by his Replication hath Alledged and of this he puts himself upon the Country and the aforesd Lord Propry in like manner and as to the Quantity of thirteen hundred and forty one Pounds of Tobacco residue of the aforesd Quantity of fourteen hundred and thirty one Pounds of Tobacco aforesd the said John saith that he the said William before the Impetration of the Original Writ of the said Lord Propry. in this Cause to wit on the fifth day of May in the Year of our Lord Seventeen hundred and forty nine at Annarundel County aforesd had the Quantity of thirteen hundred and forty one Pounds of Nett Tobacco ready in two Hogsheads (each Hogshead Containing upwards of five hundred Pounds of Nett Tobacco) and then and there Offered the same to the Vestry of Westminster Parish aforesd in Lieu of and Satisfaction for the like Quantity of Tobacco in the aforesd Replication mentioned as due from him the said William to the said Vestry which thirteen hundred and forty one Pounds of Nett Tobacco was by the said Vestry Neglected to be received And the aforesd John further saith that afterwards and between the first day of November Seventeen hundred and forty eight and the last day of May in the Year of our Lord Seventeen hundred and forty nine to wit on the twenty second day of May in the Year last aforesd at the County aforesd the said William did repair to a certain Thomas Jennings Gentleman one of the Justices of the said Right Honourable the Lord Propriatary for the County aforesd and before him then and there did make Oath that he the said William had Offered the Tobacco due from him the said William to the Vestry of Westminster Parish to the said Vestry and that they had Neglected and delayed to receive the same Whereupon a certain John Howard Gentleman one other of the Justices of the said Lord Propry for the aforesd County afterwards to wit on the Twenty fifth day of May in the Year last aforesd at the County aforesd did Appoint Thomas Wright and Aaron Hawkins two sufficient Persons and Freeholders in the Neighbourhood (not being of Kin either to the said William or to the said Vestry) where he the said William to View Search & Examine such Tobacco so then ready to be paid in discharge of the said Debt and Tendered as aforesd and which said Thomas and Aaron did afterwards to wit on the day and Year last aforesd at the County aforesd take their Oaths Administred by the said John Howard well and truly to View Search and Examine the Tobacco due from and as aforesd Tendered by the aforesd William to the aforesd Vestry whether the same were Clean Sound and Merchantable and to make report thereof to him the said John Howard or to some

(other)

other Magistrate of the said County and the aforesd William further saith that afterwards and before the Impetration of the Original Writ of the said Lord Propry. in this Cause to wit on the Twenty sixth day of May in the Year last aforesd at the County aforesd they the said Thomas Wright and Aaron Hawkins did View Search and Examine the Tobacco due from and as aforesd Tendered by the aforesd William to the said Vestry and upon the View Search and Examination aforesd the said Tobacco being by the aforesd Thomas and Aaron found clean Sound and Merchantable and fit to be paid in discharge of the aforesd Debt of thirteen hundred and forty one Pounds of Tobacco so as aforesd due from the said William Thornton to the said Vestry they the said Thomas and Aaron did then & there Mark the Quantity of thirteen hundred and forty one Pounds of Nett Tobacco in two Hogsheads (each Hogshead Containing upwards of five hundred Pounds of Nett Tobacco) for the said Vestry upon the head and Bulge and did also then & there Weigh the same and the Nett Weights thereof did signify unto the aforesd John Howard and of the Premises did then & there make Report to the said John Howard according to the forms of the acts of Assembly in such Cases made & Provided And this the said John is ready to Verify and so forth Wherefore the said John prays Judgment if the said Lord Propry his Action aforesd therefore against him the said John to have or maintain ought &c.

And the aforesd Attorney General saith that the Plea aforesd by the aforesd John in manner & form aforesd in his Rejoinder above Pleaded and the matter in the same contained are no ways Sufficient in Law to Preclude the said Lord Propry from having his Action aforesd thereof against him the said John to which said Plea he hath no need nor by the Law of the Land is in any wise held to Answer and this the said Attorney General on behalf of the said Lord Propry is ready to Verify wherefore for want of a sufficient Rejoinder in this behalf the said Attorney General on behalf of the said Lord Propriatary prays Judgment for the Debt aforesd and the Damages Sustained by Occasion of detaining the said Debt to the said Lord Propry to be Adjudged &c.

And the said John saith that the Plea aforesd by him the said John in manner and form aforesd above in his Rejoinder Pleaded and the matter in the same contained are good and sufficient in Law to Preclude the said Lord Propry from having his Action aforesd thereof against him the said John which said Plea and the matter in the same contained he the said John is ready to Verify &c. And because the said Attorney General hath not Answered to that Rejoinder nor the same hitherto hath any way denied the said John as before prays Judgment and that the said Lord Propry may be Precluded from having his Action aforesd against him the said John

Whereupon all and singular the Premises being by the Court here seen heard fully understood and mature deliberation thereupon had For that it seems to the Court here that the Plea aforesd by the aforesd Attorney General on behalf of the said Lord Propry. in manner and form aforesd above in his Replication pleaded and the matter in the same contained are no ways sufficient in Law for the said Lord Propry to have or maintain his Action aforesd thereof against the aforesaid John

Therefore it is Considered by the Justices here that the said Lord Propry take nothing by his Writ aforesd but that the said John Hope go thereof without day &c. and it is also Considered that the said John Hope recover against the Vestry of Westminster Parish in Annarundel County (at whose request this Suit was brought) the Sum of

709 3/4 Pounds of Tobacco by the Court here unto him on his Assent Adjudged for his Costs and Charges by him about his defence in this behalf laid out and expended and that he have thereof his Execution &c.

Mon. Capt. Gordon withdrew from the Bench on the Argument hereof

Test. A Burgess Clk